Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-76-2911

PORTER COUNTY CHAPTER OF THE IZAAK WALTON LEAGUE OF AMERICA, INC., et al.; and THE PEOPLE OF THE STATE OF ILLINOIS, Ex Rel. WILLIAM J. SCOTT, Attorney General of the State of Illinois; and THE CITY OF GARY, INDIANA,

Petitioners,

vs.

THE NUCLEAR REGULATORY COMMISSION, THE UNITED STATES OF AMERICA, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[Signatures on Conclusion Page]

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TABLE OF CONTENTS

PAGE

OPINIONS BELOW AND PRIOR OPINION OF THIS COURT 2

JURISDICTION 3

QUESTIONS PRESENTED 3

STATUTES INVOLVED 4

STATEMENT OF THE CASE 5

REASONS FOR GRANTING THE WRIT 13

I.

The Specific Statutory Authority of the Commission to Issue Licenses Neither Directly Nor by Implication Confers the Power to License Activity Which Will Cause Adverse Impacts on a National Park under the Specific and Exclusive Jurisdiction of Interior for Preservation, Protection and Management 14

A. The Authorizing Legislation of the Commission Does Not Grant It the Authority to Permit Activity Which Will Damage or Interfere with a National Park Except in Extraordinary Circumstances Not Present Here 14

B. Congress has Delegated Specific and Exclusive Jurisdiction over the National Park System, Including the National Lakeshore, to the Department of the Interior 17

II.

NEPA Does Not Confer Authority upon the Commission to Permit Intrusions into a National Park Nor to Decide the Amount of Harm to Be Inflicted on the Park 20

CONCLUSION 24

APPENDIX OF STATUTES 1a

TABLE OF CITATIONS

Cases

Ex Parte Endo, 323 U.S. 283, 300-302 (1944) 14

Jones v. Lynn, 477 F. 2d 885, 890 (1st Cir. 1973) 21

Phelps Dodge Corp. v. Labor Board, 313 U.S. 177, 193-194 (1941) 14

Shuttle Corp. v. Transit Comm'n., 393 U.S. 186, 187 (1968) 19

State of New Hampshire v. Atomic Energy Commission, 406 F. 2d 170, 174 (1st Cir. 1969); cert. den. 395 U.S. 962 (1969) 15, 21

Udall v. Washington, Virginia and Maryland Coach Co., 398 F. 2d 765 (D.C. Cir. 1968) 19

United States ex rel. Roughton v. Ickes, 101 F. 2d 248, 252 (D.C. Cir. 1938) 19

United States v. SCRAP (SCRAP I), 412 U.S. 669, 694 (1973) 21

United States v. Stocco Homes, Inc., 498 F. 2d 597, 607 (3rd Cir. 1974) 21

Statutes

28 U.S.C. §1254(1) 3

Atomic Energy Act of 1954, as amended
- 42 U.S.C. §§2011 *et seq.* 4, 5, 14, 15, 1a
- 42 U.S.C. §2097 ..... 15, 16, 1a
- 42 U.S.C. §§2131-2140 ..... 15, 2a-9a
- 42 U.S.C. §2201 ..... 15, 9a

Clean Air Act
- 42 U.S.C. §§1857-1858(a) ..... 22n.

Endangered Species Act
- 16 U.S.C. §§1531-1543 ..... 22n.

Energy Reorganization Act
- 42 U.S.C. §§5801-5891 ..... 5n.
- 42 U.S.C. §5814(c) ..... 5n.
- 42 U.S.C. §5841(f) ..... 5n.
- 42 U.S.C. §5841(g) ..... 5n.

Federal Power Act
- 16 U.S.C. §797(e) 22

Federal Water Pollution Control Act Amendments of 1972
- 33 U.S.C. §§1251-1376 ..... 22n.

Indiana Dunes National Lakeshore Authorization Act
- 16 U.S.C. §§460u-460u-9 ..... 4, 17, 19, 23, 19a-25a
- 16 U.S.C. §460u 5, 17, 19a
- 16 U.S.C. §460u-6 ..... 18, 23a
- 16 U.S.C. §460u-6(b) 18, 24a

Marine Protection Research and Sanctuaries Act of 1972
- 33 U.S.C. §§1401-1444 ..... 22n.

National Environmental Policy of 1969
- 42 U.S.C. §§4321 *et seq.* 4, 9n., 26a
- 42 U.S.C. §4335 ..... 21, 29a

Noise Control Act of 1972
- 42 U.S.C. §§4901-4918 ..... 22n.

Organic Act of the National Park Service, as amended
- 16 U.S.C. §1 ..... 4, 7, 17, 18, 19, 23, 29a
- 16 U.S.C. §2 ..... 4, 17, 19, 23, 32a

Public Law 91-383, August 18, 1970
(National Park Service)
16 U.S.C. §1a-1 ..... 4, 17, 18, 19, 23, 30a
16 U.S.C. §1c 4, 17, 18, 19, 23, 30a

Wild and Scenic Rivers Act
16 U.S.C. §§1271-1287 22

Wilderness Act of 1964
16 U.S.C. §§1131-1136 ..... 22n.

Regulations

10 CFR §100.3(a) 8

10 CFR §100.3(b) 8

10 CFR §100.11(a)(1) 8

10 CFR §100.11(a)(2) 8

Compilation of Administrative Policies for National Parks and National Monuments of Scientific Significance (Natural Area Category), Revised 1970, p. 34 ..... 7n.

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Petitioners,

vs.

THE NUCLEAR REGULATORY COMMISSION, THE UNITED STATES OF AMERICA, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners[1] pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on April 13, 1976.

[1] Petitioners are Porter County Chapter of the Izaak Walton League of America, Inc.; Concerned Citizens against Bailly Nuclear Site; Businessmen for the Public Interest, Inc.; James E. Newman; Mildred Warner; and George Hanks; all of whom were petitioners in the court below and intervenors in the agency proceeding under review; and the People of the State of Illinois; and the City of Gary, Indiana, both of which were petitioners-intervenors in the court below.

OPINIONS BELOW AND PRIOR OPINION OF THIS COURT

This opinion of the court below, reported at 533 F. 2d 1011, is reproduced in the Appendix to this Petition at pp. 1-13. The order denying petitions for rehearing and suggestions for rehearing *en banc* is reproduced in the Appendix at p. 14.

The Initial Decision of the Atomic Safety and Licensing Board of the Atomic Energy Commission of April 5, 1974, reported at RAI-74-4, 557, is reproduced in the Appendix at pp. 65-186. The Atomic Safety and Licensing Appeal Board decision of August 29, 1974, which is the final agency decision under review and is reported at RAI-74-8, 244, is reproduced in the Appendix at pp. 187-219.

The order of the court of appeals of October 16, 1974 staying construction pending judicial review is reproduced in the Appendix at pp. 63-64, and its order and opinion of April 1, 1975, setting aside the decision of the AEC, reported at 515 F. 2d 513, is reproduced in the Appendix at pp. 22-61. The opinion of this Court of November 11, 1975, reversing the court of appeals decision and remanding to the court for consideration of other contentions, reported at 423 U.S. 12, is reproduced in the Appendix at pp. 15-21.

JURISDICTION

The judgment of the court of appeals was entered on April 13, 1976 (App. p. 1). Timely petitions for rehearing and suggestions for rehearing *en banc* were denied on June 1, 1976 (App. p. 14). This Court has jurisdiction to review the judgment by Writ of Certiorari pursuant to 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

The decision of the court below, affirming a decision of the Atomic Energy Commission ("Commission"), in which the Commission purported to exercise authority over a National Park by permitting construction of a nuclear power plant on a site immediately adjacent to the National Park, even though the Commission found that the plant would cause intrusions into and impacts upon the Park, presents important and continuing questions of federal law regarding the authority of an administrative agency, which have not been, but should be, settled by this Court.

More specifically, the questions which this Court should decide are:

1. Whether the Commission may, in the absence of a specific statutory grant, exercise authority over a National Park—here the Indiana Dunes National Lakeshore which is the subject of special statutory protection—by permitting a private company to engage in an activity which the Commission has found will impact within the boundaries of the

National Park and by purporting to determine what measures shall be taken within the Park to mitigate the damage, where the Department of the Interior has specific and exclusive jurisdiction to preserve, protect and manage the National Park.

2. Whether the National Environmental Policy Act of 1969 ("NEPA") confers authority upon the Commission to determine what intrusions into, impacts upon, and damage mitigating measures within the National Park shall be permitted or be taken, where all such activities are otherwise prohibited.

STATUTES INVOLVED[2]

Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2011 *et seq.*

National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*

Indiana Dunes National Lakeshore Authorization Act, 16 U.S.C. §§ 460u-460u-9.

Organic Act of the National Park Service, as amended, 16 U.S.C. §§ 1, 2.

Public Law 91-383, August 18, 1970 (National Park Service), 16 U.S.C. §§ 1a-1, 1c.

[2] Due to the length of the provisions of the statutes involved, their pertinent text is set forth in the Statutory Appendix at the end of the Petition.

STATEMENT OF THE CASE

The court below denied a petition to review final decisions of the Commission,[3] which authorized issuance to Northern Indiana Public Service Company ("NIPSCO") of a construction permit for a nuclear power plant to be built on NIPSCO's Bailly site in Porter County, Indiana on the southern shore of Lake Michigan.

The Bailly site shares a common boundary with the Indiana Dunes National Lakeshore, authorized by Congress in 1965 to be established as a unit of the National Park System by the Secretary of the Interior "in order to preserve for the educational, inspirational and recreational use of the public certain portions of the Indiana Dunes and other areas of scenic, scientific and historic interest and recreational value . . ." 16 U.S.C. § 460u.

[3] In 1974, after the agency decision and while this case was pending in the court of appeals, Congress separated the promotional and regulatory functions previously performed by the Atomic Energy Commission ("AEC") by enacting the Energy Reorganization Act of 1974, Pub. L. No. 93-438, October 11, 1974, 42 U.S.C. §§ 5801-5891. The legislation abolished the AEC and transferred its research and development functions to the new Energy Research and Development Administration. 42 U.S.C. § 5814(c). The AEC's regulatory functions were transferred to the new Nuclear Regulatory Commission ("NRC"). *Id.*, § 5841(f). Also transferred to this new Commission were the responsibilities of the Atomic Safety and Licensing Board and the Atomic Safety and Licensing Appeal Board. *Id.*, § 5841(g).

For convenience of reference throughout this Petition, the agency will be referred to as the "Commission".

The National Lakeshore was found by the Commission, and by the court below, to be one of the best remaining areas of the Indiana Dunes—"a natural area difficult to equal anywhere in the Nation" (App. pp. 28-29; 109). As the Commission's Atomic Safety and Licensing Board concluded (App. pp. 109-110):

> "The location of the proposed facility on the shore of Lake Michigan to the north and bounded on the east by the Indiana Dunes National Lakeshore is characterized by its proximity to an environment of special qualities.
>
> * * *
>
> That portion of the Indiana Dunes National Lakeshore adjacent to the Bailly site and consisting of some 1,200 acres is one of the best remaining areas in the Indiana Dunes.
>
> * * *
>
> The dynamic nature of the Indiana Dunes has attracted scientists as an ideal outdoor laboratory to study the principles of ecological succession. . . .
>
> On the south of the dune complex, and to the north of the ancient shoreline of the Calumet stage of Lake Michigan . . . is a unique wetland area known as Cowles Bog which contains an undrained pond or depression filled with water and largely covered by a relatively thick mat of vegetation."[4]

Prior to the passage of the act authorizing the National Lakeshore, then Senator Paul Douglas expressed his views of the area:[5]

[4] Similarly, the Commission's Atomic Safety and Licensing Appeal Board stated:

> "The Lakeshore . . . encompasses beaches, sand dunes, marshes, and bogs and is generally dedicated to public recreational purposes. Some of its features, the dune ridges and Cowles Bog National Landmark in particular, are undoubtedly unique." (App. p. 200)

[5] Hearings before the Subcommittee on Flood Control—Rivers and Harbors of the Committee on Public Works, U.S. Senate, 89th Cong., 1st Sess., April 20-23, 1965, 389.

> "The Indiana Dunes are one of nature's great gifts to this country. As Carl Sandburg has written:
>
> 'The dunes are to the Midwest what the Grand Canyon is to Arizona and Yosemite is to California. They constitute a signature of time and eternity: Once lost the loss would be irrevocable.'
>
> The proposed Indiana Dunes National Lakeshore would provide a badly needed beach playground, along with nature areas of high scientific value, for the millions of people living in the crowded Gary-Chicago region."

The Department of the Interior ("Interior"), which has exclusive jurisdiction over the National Lakeshore, has classified the 1,200 acres immediately abutting NIPSCO's Bailly site as Class IV lands: "those which contain unique natural features" . . . "which must have the highest order of protection" . . . and on which "nothing in the way of human use should be permitted . . . that intrudes upon or may in any way damage or alter the scene." (App. pp. 109-110; Int. Ex. 23).[6]

As a unit of the National Park System, the use of the National Lakeshore is under the jurisdiction of Interior's National Park Service which is obligated to promote and regulate its use to conform to the fundamental purpose of the Park (16 U.S.C. § 1). That fundamental purpose is:

> "to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." (*ibid.*)

[6] Compilation of Administrative Policies for National Parks and National Monuments of Scientific Significance (Natural Area Category) Revised 1970, p. 34.

The power plant which NIPSCO seeks to build at the Bailly site includes a building for the nuclear reactor located 800 feet from the National Lakeshore boundary (Staff Ex. 5, p. II-1), turbines, generators and equipment for handling and storing radioactive wastes. The plant would include a massive cooling tower approximately 450 feet high, 440 feet in diameter at the base, and 350 feet in diameter at the top (App. pp. 129; 201).

Commission safety regulations require that there be an area around the plant under the complete control of NIPSCO, the "exclusion area", which the Commission determined should be 107 acres extending to the boundary of the National Lakeshore. [App. p. 27; 10 CFR §§ 100.3(a), 100.11(a)(1)]. In addition, the safety regulations required a "low population zone" immediately surrounding the exclusion area, intended to serve as a buffer zone, in which the population is such that "there is a reasonable probability that appropriate protective measures could be taken" in the event of a nuclear accident [10 CFR §§ 100.3(b), 100.11(a)(2)]. The Commission determined that this buffer zone for nuclear accidents at the Bailly site should extend 1.5 miles into, and encompass some 640 acres of, the Class IV area of the National Lakeshore. (App. pp. 52, 71, 203).

The Assistant Secretary of the Interior for Fish, Wildlife and Parks clearly articulated Interior's opposition to the issuance of the construction permit to NIPSCO. The Assistant Secretary informed the Commission's Licensing Board of Interior's responsibilities for preservation and maintenance of the National Lakeshore, of the adverse impacts which the Bailly

plant would cause to the Lakeshore, and of Interior's opposition to those impacts. He stated that it was accurate that "the Department is completely against the Bailly site irrevocably." (App. p. 46).[7]

On August 29, 1974, the Commission issued its final decision authorizing the grant of a construction permit to NIPSCO. The Commission found as a matter of fact that a number of adverse impacts upon the National Lakeshore would occur from the construction and operation of the nuclear power plant, although it sought to minimize their significance. The first impact would be a drawdown or lowering of ground water in the National Lakeshore during the lengthy period of construction due to site dewatering, with irreparable injury to the fragile ecology of the Lakeshore. The Commission's Licensing Board regarded this impact as "insignificant" but

[7] The Assistant Secretary's communication was the fourth in a series which consistently informed the Commission of Interior's opposition to the plant at the Bailly site because of the resulting adverse impacts upon the National Lakeshore. First, the Field Representative of the Secretary of the Interior has so informed the Commission's Licensing Board. (Tr. 227 *et seq.*). Second, Interior's comments dated October 19, 1972 on the Commission's draft environmental statement under NEPA (42 U.S.C. §§ 4321 *et seq.*) detailed the reasons for its opposition and concluded that "construction of the proposed Bailly Generating Station Nuclear-1 on the border of the Indiana Dunes National Lakeshore does not serve the highest public interest". (Reg. Staff Ex. 5, pp. D-12—D-18; App. p. 46). Third, Interior's subsequent comments dated April 16, 1973 on the Commission's final environmental statement reiterated its opposition. (App. Ex. 35; Appendix to Petitioners' Motion for Stay Pending Judicial Review, Doc. 3)

nevertheless approved a dewatering monitoring program to detect adverse effects of dewatering and to mitigate such effects (App. pp. 116-117).[8] [9]

The Commission found that the cooling tower "constitutes a man-made, visual intrusion which is an adverse environmental impact of the Bailly plant". (App. p. 132). In addition, it found that the interaction of the vapor plume of the cooling tower with the emissions from the smokestack of an existing fossil fuel plant at the Bailly site would cause sulfuric acid misting in the National Lakeshore. (App. pp. 120-22). The Commission's description of these impacts as not "significant" or "negligible" or "little" (App. pp. 124, 125, 127) does not alter the fact that it found they would occur within the boundaries of the National Park.

Moreover, such descriptions are inconsistent with the Commission's requirements of monitoring programs to detect the seriousness of the damage caused to the

[8] In a subsequent administrative proceeding, permitted to be held by the court of appeals, the Commission approved a modified construction technique which it found would have a high probability, but not a certainty, of substantially reducing or eliminating the need for extensive dewatering at the site. (NRCI-75/12, 858, 864-865).

[9] The Licensing Board's confidence in the reliability of the dewatering monitoring program is striking, in view of NIPSCO's admission that it had no criteria to determine whether a dewatering effect has occurred and that it could not distinguish between a seasonal fluctuation and an actual drawdown during construction. (Dunn, Tr. 9474, 9478)

National Lakeshore (App. pp. 116, 117, 124, 125, 127).[10] The Commission's decision also authorized NIPSCO and the Commission's staff to determine what measures should be taken within the boundaries of the National Lakeshore "to eliminate or significantly reduce the detrimental effects of damage", if "harmful effects or evidence of irreversible damage are detected by the monitoring program". (App. 176-177).

Following denial of a stay of construction by the Commission (App. pp. 214-219), the court of appeals on October 16, 1974 imposed such a stay pending judicial review (App. pp. 63-64). As of the time of the filing of this Petition, there has been no resumption of construction activity on the site.

On April 1, 1975 the court below entered its judgment setting aside the Commission's decision on a ground unrelated to the questions presented here. The court held that the Commission had failed to comply with its own regulations regarding the required minimum distance between nuclear reactors and areas of dense population. (App. p. 22). On November 11, 1975, this Court granted certiorari and reversed that decision of the court of

[10] The Licensing Board also found that there would be a discharge of filter backwash and demineralized regenerant wastes and sanitary wastes to the existing ash ponds, and seepage from those ponds (at approximately 1 million gallons per day) into the ground water which flows into the nearby interdunal ponds in the Lakeshore, as to which the Board concluded that the "incremental effect" is likely to be "insignificant". (App. p. 140). The Licensing Board said that an increase either in the amount of surface water runoff into the Lakeshore, or in the amount of contaminants in the water due to construction and operation of the plant would not be a "meaningful impact" and that "in the event that surface water runoff problems arise unexpectedly, there are ample means to correct the situation." (App. p. 113). There was no indication as to what those "ample means" might be.

appeals on the ground that the lower court had not properly interpreted the Commission's regulations. This Court remanded for consideration of other contentions against the issuance of the construction permit not decided by the court of appeals (App. p. 18).

On April 13, 1976, the court below rendered its judgment denying all other contentions and denied the petition for review of the Commission's decisions. (App. p. 1). With respect to the questions presented by this Petition for Certiorari, the court below held that the Commission had authority to make the determination whether the environmental impact of construction and operation of the plant upon the National Lakeshore will be substantial enough to require disapproval of the site. (App. p. 5). In reaching that conclusion the court referred to the failure of the Department of the Interior to either participate as a party in the Commission's proceedings and the judicial review thereof, or to initiate separate litigation seeking an injunction. (App. p. 4). The court could find nothing in the authorizing legislation for either the Commission or Interior which suggests that the views of the latter were to be controlling in this situation. (App. p. 5). It said that the Commission has "considered" Interior's comments and "has given attention to" the environmental effects of the Bailly plant upon the National Lakeshore, "as the law requires". (*Ibid.*)

Timely petitions for rehearing, filed by all petitioners, were denied by the court below on June 1, 1976 (App. p. 14).

REASONS FOR GRANTING THE WRIT

The decision of the court below establishes a precedent of far-reaching consequences. Without considering the specific authority, express or implied, granted by Congress to the Commission, the court has permitted the Commission to exercise broad environmental powers, quite contrary to its Congressional purpose. The court below reached its decision through an application and interpretation of NEPA which is inconsistent with decisions of this Court and other courts of appeals. If the interpretation rendered by the lower court is permitted to stand, NEPA may well be turned into a statute for environmental degradation, rather than one for environmental protection.

The subject matter of this litigation is the protection and preservation of a National Park, and it presents the question of whether, having found that the action it was asked to license would adversely impact upon a National Park, the Commission had any authority to issue that license. Only incidentally does it involve the subject of nuclear power plants. It presents no technical questions within the expertise of the Commission.

We respectfully submit that review by this Court of the important and continuing questions of federal law presented by this case is warranted.

I.

THE SPECIFIC STATUTORY AUTHORITY OF THE COMMISSION TO ISSUE LICENSES NEITHER DIRECTLY NOR BY IMPLICATION CONFERS THE POWER TO LICENSE ACTIVITY WHICH WILL CAUSE ADVERSE IMPACTS ON A NATIONAL PARK UNDER THE SPECIFIC AND EXCLUSIVE JURISDICTION OF INTERIOR FOR PRESERVATION, PROTECTION AND MANAGEMENT.

A. The Authorizing Legislation of the Commission Does Not Grant It the Authority to Permit Activity Which Will Damage or Interfere With a National Park Except in Extraordinary Circumstances Not Present Here.

As a federal agency created by Congress, the Commission can exercise only that authority explicitly conferred or necessarily implied from the Congressional purpose in creating it. This court has repeatedly held that administrative authority, like that asserted by the Commission here, must be measured in light of the purpose for which it was conferred. Refer, for example, to *Phelps Dodge Corp. v. Labor Board*, 313 U.S. 177, 193-194 (1941); *Ex Parte Endo*, 323 U.S. 283, 300-302 (1944).

The Atomic Energy Act of 1954, as amended[11], 42 U.S.C. §§ 2011 *et seq.*, is the authorizing legislation for the licensing of construction and operation of commercial nuclear power plants. The legislative history of the Act demonstrates that the Congressional purpose behind the creation of the Commission was to assure that the licensing of the construction and operation of commercial nuclear power plants not be inimical to the common defense and security or to the health and safety of the public. As the history of the 1954 legislation reveals,

[11] As amended and in force at the time of the agency proceedings, and as further amended transferring the AEC regulatory functions to NRC. Footnote 3, p. 5, supra.

"the Congress, in thinking of the public's health and safety, had in mind only the special hazards of radioactivity". *State of New Hampshire v. Atomic Energy Commission*, 406 F.2d 170, 174 (1st Cir. 1969); *cert. den.*, 395 U.S. 962 (1969). In enacting the Atomic Energy Acts of 1946 and 1954, in overseeing their administration, and in considering amendments, Congress confined the responsibilities of the Commission under its authorizing legislation to scrutiny of and protection against hazards from radiation. *State of New Hampshire v. AEC, supra*, at 175.

No provision of the Atomic Energy Act of 1954, as amended, confers upon the Commission the authority to issue a nuclear power plant license, as here, permitting an activity by the licensee which causes harm to a National Park. Neither the sections dealing specifically with the licensing authority (42 U.S.C. §§ 2131-2140), nor the sections describing the general authority of the Commission (42 U.S.C. § 2201), confer that authority.

The sole authority granted the Commission to intrude upon or interfere with a National Park is conditioned upon extraordinary circumstances not present here. Thus in the chapter of the Atomic Energy Act dealing with prospecting, mining and removal of source material, Section 67 (42 U.S.C. § 2097) provides:

> "Sec. 67. Operations on Lands Belonging To The United States.—The Commission is authorized, to the extent it deems necessary to effectuate the provisions of this Act, to issue leases or permits for prospecting for, exploration for, mining of, or removal of deposits of source material in lands belonging to the United States: *Provided, however*, That notwithstanding any other provisions of law, such leases or permits may be issued for lands administered for national park, monument, and

wildlife purposes only when the President by Executive Order declares that the requirements of the common defense and security make such action necessary."

Regardless of the significance of the intrusions resulting from these activities, Congress has clearly specified that they cannot take place absent an Executive Order declaring them necessary for requirements of common defense and security.[12]

There is thus no explicit authority in the Commission's authorizing legislation, and no Congressional purpose from which the authority can be implied, for the Commission to do what it purported to do here—authorize NIPSCO to cause irrevocable harm to the National Lakeshore. Having once found, as it did, that there would be any adverse impact on the National Lakeshore, the Commission was without authority to issue the permit. Yet that is precisely what the Commission did.

There is no factual dispute that construction and operation of the Bailly nuclear power plant will result in impacts on the National Lakeshore. The Commission, while it sought to minimize those impacts, nevertheless found that they would occur. The court below did not disagree. (pp. 10, 11 *supra;* App. p. 5)

The purported exercise by the Commission of authority over the National Lakeshore clearly is manifested by the physical effects of potential ground water lowering, acid misting and salt deposition inside the boundaries, and the visual intrusion of the cooling tower. Moreover,

[12] The fact that Congress dealt specifically with National Parks and other public lands in other contexts within the Atomic Energy Act further rebuts any inference of implied authority of the Commission in the present context where there has been no explicit consideration by Congress.

the Commission directed as one of the conditions of its permit that NIPSCO and the Staff of the Commission determine what action should be taken to eliminate or significantly reduce the detrimental effects or damage within the boundaries of the Lakeshore (App. p. 177). Even assuming that the "irreversible" damage to which the Commission referred could be mitigated, the Commission had no authority to do so, or to direct such activities.

B. Congress Has Delegated Specific and Exclusive Jurisdiction over the National Park System, Including the National Lakeshore, to the Department of the Interior.

The legislation authorizing creation of the National Lakeshore, and the Congressional grant of exclusive jurisdiction over the National Park System to Interior in order to preserve and maintain its natural qualities for future generations (16 U.S.C. §§ 1, 1a-1, 1c, 2, 460u-460u-9, precludes any inference that the Commission has implied authority to permit intrusions into the National Lakeshore, or into any other unit of the National Park System.

In 1966, Congress authorized the Secretary of the Interior to establish the Indiana Dunes National Lakeshore "[i]n order to preserve for the educational, inspirational and recreational use of the public certain portions of the Indiana Dunes and other areas of scenic, scientific and historic interest and recreational value . . ." 16 U.S.C. § 460u. The clear Congressional intent behind this legislation was to preserve and protect the unique natural values of the National Lakeshore. Indeed, so explicit was this Congressional mandate that the Secretary of the Interior was even restricted in the development of the park. As Section 6(b) of the statute provides:

> "In order that the lakeshore shall be permanently preserved in its present state, no development or plan for the convenience of visitors shall be undertaken therein which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions now prevailing or with the preservation of such historic sites and structures as the Secretary may designate . . ." [16 U.S.C. § 460u-6(b)].

In order to safeguard the uniqueness of the National Lakeshore, Congress specifically delegated to the Secretary of the Interior the power to utilize the full scope of his authority for the National Park System and for conservation and management of natural resources to preserve the National Lakeshore (16 U.S.C. § 460u-6). The authority thus delegated to the Secretary is extremely broad. (16 U.S.C. §§ 1, 1a-1, 1c, 2). As explained by the Assistant Secretary of the Interior for Fish, Wildlife and Parks, to whom the Secretary has delegated authority with respect to the National Park Service:

> "The Secretary of the Interior is responsible for the stewardship of our National Park System, having been directed by Congress to preserve and manage it for the benefit and inspiration of all the people of the United States. The System includes any area of land and water administered by the Secretary through the National Park Service for park, monument, historic, parkway, recreational or other purposes. The Secretary's stewardship comprises supervision, management and control over these Federal areas or units of the National Park System. It further includes promoting and regulating the use of the units of the National Park System in conformity with their fundamental purpose which is to conserve their scenery, natural and historic objects and wildlife, and to provide for the enjoyment of the units in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." (pp. 1, 2 following Tr. 7528)

The Secretary, in short, is the trustee for the people of the United States over the public lands, including the National Lakeshore. As the court of appeals for the District of Columbia Circuit said in *United States ex rel. Roughton v. Ickes*, 101 F.2d, 248, 252 (D.C. Cir., 1938):

> "Congress has created the Land Department, under the supervision and control of the Secretary of the Interior, to which is confided the execution of the laws which regulate the purchase, selling, and disposition of the public lands. U.S. ex rel. Riverside Oil Co. v. Hitchcock, 190 U.S. 316, 23 S. Ct. 698, 47 L. Ed. 1047. 'The secretary is the guardian of the people of the United States over the public lands. The obligations of his oath of office oblige him to see that the law is carried out, and that none of the public domain is wasted or is disposed of to a party not entitled to it . . .'"

The jurisdiction of the Secretary over National Parks, and indeed all units of the National Park System, is both broad and exclusive. *Shuttle Corp. v. Transit Comm'n.*, 393 U.S. 186, 187 (1968); *Udall v. Washington, Virginia and Maryland Coach Co.*, 398 F.2d 765 (D.C. Cir. 1968); 16 U.S.C. §§ 1, 1a-1, 1c, 2. As the court below recognized in its prior decision in this case: "Congress has delegated its authority over the public lands of the Indiana Dunes National Lakeshore to the Secretary of the Interior, 16 U.S.C. §§ 460u-460u-9". (App. p. 46). This delegation specifically and exclusively vests in the Department of the Interior the duty of guardianship over the National Lakeshore. There is no statutory authority and no room for any statutory interpretation to infer that any other federal agency, including the Commission, has any jurisdiction whatsoever over the National Lakeshore.[13]

[13] The plain and consistent opposition of Interior, in the exercise of its exclusive jurisdiction over the National Lakeshore, to the intrusions which would result from the Bailly plant, obviously precludes any theory that Interior somehow acquiesed in the Commission's decision which accorded "no special weight" to the testimony of the Assistant Secretary (App. p. 203) and purported to "overrule" Interior (App. p. 175).

In sum, no provision of, or inference from, the Atomic Energy Act authorizes the Commission to permit intrusions into public lands absent the extraordinary circumstances noted *supra*, pp. 15-16, which do not exist here. Once the Commission found, as it did, that the activity which it was asked to license would have an adverse impact upon the National Lakeshore, the Commission could not, consistent with its own limited statutory authority and the exclusive jurisdiction of Interior, issue a construction permit to NIPSCO.

II.

NEPA DOES NOT CONFER AUTHORITY UPON THE COMMISSION TO PERMIT INTRUSIONS INTO A NATIONAL PARK NOR TO DECIDE THE AMOUNT OF HARM TO BE INFLICTED ON THE PARK.

Since the Atomic Energy Act plainly does not confer the authority, the holding of the court below that the commission had "authority to make" the determination that "the environmental impact of construction and operation of the nuclear plant (upon the National Lakeshore) will not be substantial enough to require disapproval of the site" (App. p. 5), must have been based on NEPA.[14] Indeed, it has been held that prior to

[14] The court below also referred to the fact that Interior has asserted no contention that the Commission lacked authority and that Interior had not sought injunctive relief against construction. (App. p. 4) We know of no logic, or authority, by which the failure of Interior to litigate, either before the Commission or in court, and the court below referred to none, can either expand the authority of the Commission or reduce the exclusive jurisdiction of Interior over National Parks. Indeed, Interior may still seek injunctive relief to prevent the adverse impacts from the Bailly plant, but surely the bizarre result encouraged by the court below, of an executive branch of the government suing to enjoin activity which has been licensed by an administrative agency, should not be necessary.

NEPA, the Commission's sole duty was to consider radiological effects on public health and safety, and not general environmental impacts, in its licensing process. *State of New Hampshire v. AEC*, *supra*, p. 15. Thus, when the court said that the Commission had "given attention to the environmental effects of the Bailly plant upon the National Lakeshore, as the law requires" (App. 5), the "law" to which it referred was NEPA.

NEPA by its terms is supplementary to the statutory obligations of federal agencies. Section 105 provides that "[t]he policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of Federal agencies" (42 U.S.C. § 4335). It is clear that NEPA is not a general empowering act and cannot enlarge the jurisdiction of any federal agency to take action in violation of another statute. *United States v. SCRAP* (SCRAP I), 412 U.S. 669, 694 (1973); *Jones v. Lynn*, 477 F.2d 885, 890 (1st Cir. 1973); *United States v. Stoeco Homes, Inc.*, 498 F.2d 597, 607 (3rd Cir. 1974). As this court noted in *SCRAP I*, *supra:*

> "The statutory language, in fact, indicates that NEPA was not intended to repeal by implication any other statute. Thus, 42 U.S.C. § 4335 specifies that "[t]he policies and goals set forth in [NEPA] are supplementary to those set forth in existing authorizations of Federal agencies," and 42 U.S.C. § 4334 instructs that the Act "shall [not] in any way affect the specific statutory obligations of any Federal agency. . . ."

In holding that the NEPA consideration authorized the Commission to permit the impacts and intrusions which it found would occur to the National Lakeshore, the court below has misinterpreted NEPA in a manner that threatens every unit of the National Park System, as well as other specially protected environmental resources throughout the country. Under the court's

reading of NEPA any "major federal action" (as that term is used in NEPA) could be used to thwart the intent of Congress in affording special protection to any area.

For example, under the "Wild and Scenic Rivers Act", 16 U.S.C. §§ 1271-1287 (1968), federal agencies may not "assist by loan, grant, license or otherwise" a project having a "direct and adverse effect" on "wild," "scenic" or "recreational" rivers so designated by the Deaprtment of Interior or Agriculture. The Federal Power Commission has authority to issue licenses for dams across navigable waters when found to be "for the use and benefit of interstate or foreign commerce", 16 U.S.C. § 797(e). Under the rationale advanced by the court below, the Federal Power Commission, by relying on NEPA, could issue such a license for a dam across a "wild" or "scenic" river claiming that the beneficial use of said dam would outweigh the "direct and adverse effect" on said river. Such a balancing is not contemplated by the "Wild and Scenic Rivers Act", but would result from application of the decision of the court below. Further examples may be found in the licensing and funding of other major federal actions.[15]

[15] The Federal Government is engaged in licensing and funding the construction of highways, hospitals, housing projects, airports, dams, and pipelines. These projects are to be constructed or operated in compliance with various environmental laws and regulations adopted thereunder such as the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. §§ 1251-1376), the Noise Control Act of 1972 (42 U.S.C. §§ 4901-4918), the Marine Protection Research and Sanctuaries Act of 1972 (33 U.S.C. §§ 1401-1444), the Wilderness Act of 1964 (16 U.S.C. §§ 1131-1136), the Endangered Species Act of 1973 (16 U.S.C. §§ 1531-1543); and the Clean Air Act [42 U.S.C. §§ 1857-1858(a) (1970)]. The vitality of each of these major environmental laws is seriously undermined by the construction given to NEPA by the court below.

No court has ever held prior to the decision below that NEPA, by requiring consideration of environmental effects, enlarges an agency's authority to allow activities which are otherwise prohibited. The decision below reverses the thrust of NEPA, making it read as a statute for environmental degradation rather than environmental protection. If NEPA is to be read, as we submit it should not be, to expand the authority of an agency to permit activities inconsistent with the jurisdiction of an executive department, such a decision should come from this Court.

In light of this Court's decisions, it is obvious that NEPA should not be read as reducing the protection afforded to the National Lakeshore under the statutes authorizing its establishment and protected status as a unit of the National Park System (16 U.S.C. §§ 1, 1a-1, 1c, 2, 460u-460u-9). NEPA gives the Commission no authority to determine the extent of harm to be inflicted upon the National Lakeshore. Once the Commission determined under NEPA that there would be intrusions into and impacts upon the National Lakeshore from the licensing action requested by NIPSCO, the Commission was legally precluded from permitting them.

CONCLUSION

In view of the far reaching consequences of the decision of the court below on the National Park System and on the role of NEPA, for the reasons set forth above, it is submitted that Certiorari should be granted.

Respectfully submitted,

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APPENDIX OF STATUTES

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Atomic Energy Act Of 1954, As Amended

§ 2011. Congressional declaration of policy

Atomic energy is capable of application for peaceful as well as military purposes. It is therefore declared to be the policy of the United States that—

(a) the development, use, and control of atomic energy shall be directed so as to make the maximum contribution to the general welfare, subject at all times to the paramount objective of making the maximum contribution to the common defense and security; and

(b) the development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise.

Aug. 1, 1946, c. 724, § 1, as added Aug. 30, 1954, c. 1073, § 1, 68 Stat. 921.

* * * * *

§ 2097. Operations on lands belonging to the United States

The Commission is authorized, to the extent it deems necessary to effectuate the provisions of this chapter, to issue leases or permits for prospecting for, exploration for, mining of, or removal of deposits of source material in lands belonging to the United States: *Provided, however,* That notwithstanding any other provisions of law, such leases or permits may be issued for lands administered for national park, monument, and wildlife purposes only when the President by Executive Order declares that the requirements of the common defense and security make such action necessary.

Aug. 1, 1946, c. 724, § 67, as added Aug. 30, 1954, c. 1073, § 1, 68 Stat. 934.

* * * * *

§ 2131. License required

It shall be unlawful, except as provided in section 2121 of this title, for any person within the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export any utilization or production facility except under and in accordance with a license issued by the Commission pursuant to section 2133 or 2134 of this title.

Aug. 1, 1946, c. 724, § 101, as added Aug. 30, 1954, c. 1073, § 1, 68 Stat. 936, and amended Aug. 6, 1956, c. 1015, § 11, 70 Stat. 1071.

§ 2132. Utilization and production facilities for industrial or commercial purposes

(a) Except as provided in subsections (b) and (c) of this section, or otherwise specifically authorized by law, any license hereafter issued for a utilization or production facility for industrial or commercial purposes shall be issued pursuant to section 2133 of this title.

(b) Any license hereafter issued for a utilization or production facility for industrial or commercial purposes, the construction or operation of which was licensed pursuant to section 2134(b) of this title prior to enactment into law of this subsection, shall be issued under section 2134(b) of this title.

(c) Any license for a utilization or production facility for industrial or commercial purposes constructed or operated under an arrangement with the Commission entered into under the Cooperative Power Reactor Demonstration Program shall, except as otherwise specifically required by applicable law, be issued under section 2134(b) of this title.

Aug. 1, 1946, c. 724, § 102 as added Aug. 30, 1954, c. 1073, § 1, 68 Stat. 936, and amended Dec. 19, 1970, Pub.L. 91-560, § 3, 84 Stat. 1472.

§ 2133. Commercial licenses—Conditions

(a) The Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to section 2153 of this title, utilization or production facilities

for industrial or commercial purposes. Such licenses shall be issued in accordance with the provisions of subchapter XV of this chapter and subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this chapter.

Nonexclusive basis

(b) The Commission shall issue such licenses on a nonexclusive basis to persons applying therefor (1) whose proposed activities will serve a useful purpose proportionate to the quantities of special nuclear material or source material to be utilized; (2) who are equipped to observe and who agree to observe such safety standards to protect health and to minimize danger to life or property as the Commission may by rule establish; and (3) who agree to make available to the Commission such technical information and data concerning activities under such licenses as the Commission may determine necessary to promote the common defense and security and to protect the health and safety of the public. All such information may be used by the Commission only for the purposes of the common defense and security and to protect the health and safety of the public.

License period

(c) Each such license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years, and may be renewed upon the expiration of such period.

Limitations

(d) No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 2153 of this title, or except under the provisions of section 2139 of this title. No license may be issued to an alien or any any[1] corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

Aug. 1, 1946, c. 724, § 103, as added Aug. 30, 1954, c. 1073, § 1, 68 Stat. 936, and amended Aug. 6, 1956, c. 1015, §§ 12, 13, 70 Stat. 1071; Dec. 19, 1970, Pub.L. 91-560, § 4, 84 Stat. 1472.

[1] So in original.

§ 2134. Medical therapy, research, and development licenses; limitations

(a) The Commission is authorized to issue licenses to persons applying therefor for utilization facilties for use in medical therapy. In issuing such licenses the Commission is directed to permit the widest amount of effective medical therapy possible with the amount of special nuclear material available for such purposes and to impose the minimum amount of regulation consistent with its obligations under this chapter to promote the common defense and security and to protect the health and safety of the public.

(b) As provided for in subsection (b) or (c) of section 2132 of this title, or where specifically authorized by law, the Commission is authorized to issue licenses under this subsection to persons applying therefor for utilization and production facilities for industrial and commercial purposes. In issuing licenses under this subsection, the Commission shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under this chapter.

(c) The Commission is authorized to issue licenses to persons applying therefor for utilization and production facilities useful in the conduct of research and development activities of the types specified in section 2051 of this title and which are not facilities of the type specified in subsection (b) of this section. The Commission is directed to impose only such minimum amount of regulation of the licensee as the Commission finds will permit the Commission to fulfill its obligations under this chapter to promote the common defense and security and to protect the health and safety of the public and will permit the conduct of widespread and diverse research and development.

(d) No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 2153 of this title or except under the provisions of section 2139 of this title. No license may be issued to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

Aug. 1, 1946, c. 724, § 104, as added Aug. 30, 1954, c. 1073, § 1, 68 Stat. 937, and amended Dec. 19, 1970, Pub.L. 91-560, § 5, 84 Stat. 1472.

§ 2135. Anti-trust provisions governing licenses; reports to Attorney General

(a) Nothing contained in this chapter shall relieve any person from the operation of sections 1 to 13, 14 to 19, 20, 21, 22 to 27, 41 to 46, and 47 to 58 of Title 15 and sections 52 and 53 of Title 29. In the event a licensee is found by a court of competent jurisdiction, either in an original action in that court or in a proceeding to enforce or review the findings or orders of any Government agency having jurisdiction under the sections cited above, to have violated any of the provisions of such sections in the conduct of the licensed activity, the Commission may suspend, revoke, or take such other action as it may deem necessary with respect to any license issued by the Commission under the provisions of this chapter.

(b) The Commission shall report promptly to the Attorney General any information it may have with respect to any utilization of special nuclear material or atomic energy which appears to violate or to tend toward the violation of any of the foregoing sections, or to restrict free competition in private enterprise.

(c) (1) The Commission shall promptly transmit to the Attorney General a copy of any license application provided for in paragraph (2) of this subsection, and a copy of any written request provided for in paragraph (3) of this subsection; and the Attorney General shall, within a reasonable time, but in no event to exceed 180 days after receiving a copy of such application or written request, render such advice to the Commission as he determines to be appropriate in regard to the finding to be made by the Commission pursuant to paragraph (5) of this subsection. Such advice shall include an explanatory statement as to the reasons or basis therefor.

(2) Paragraph (1) of this subsection shall apply to an application for a license to construct or operate a utilization or production facility under section 2133 of this title: *Provided, however*, That paragraph (1) shall not apply to an application for a license to operate a utilization or production facility for which a construction

permit was issued under section 2133 of this title unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission under this subsection in connection with the construction permit for the facility.

(3) With respect to any Commission permit for the construction of a utilization or production facility issued pursuant to subsection (b) of section 2134 of this title prior to December 19, 1970, any person who intervened or who sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination shall have the right, upon a written request to the Commission, to obtain an antitrust review under this section of the application for an operating license. Such written request shall be made within 25 days after the date of initial Commission publication in the Federal Register of notice of the filing of an application for an operating license for the facility or December 19, 1970, whichever is later.

(4) Upon the request of the Attorney General, the Commission shall furnish or cause to be furnished such information as the Attorney General determines to be appropriate for the advice called for in paragraph (1) of this subsection.

(5) Promptly upon receipt of the Attorney General's advice, the Commission shall publish the advice in the Federal Register. Where the Attorney General advises that there may be adverse antitrust aspects and recommends that there be a hearing, the Attorney General or his designee may participate as a party in the proceedings thereafter held by the Commission on such licensing matter in connection with the subject matter of his advice. The Commission shall give due consideration to the advice received from the Attorney General and to such evidence as may be provided during the proceedings in connection with such subject matter, and shall make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws as specified in subsection (a) of this section.

(6) In the event the Commission's finding under paragraph (5) is in the affirmative, the Commission shall also consider, in determining whether the license should be issued or continued, such other factors, including the need for power in the affected area, as the Commission in its judgment deems necessary to protect the public interest. On the basis of its findings, the Commission shall have

the authority to issue or continue a license as applied for, to refuse to issue a license, to rescind a license or amend it, and to issue a license with such conditions as it deems appropriate.

(7) The Commission, with the approval of the Attorney General, may except from any of the requirements of this subsection such classes or types of licenses as the Commission may determine would not significantly affect the applicant's activities under the antitrust laws as specified in subsection (a) of this section.

(8) With respect to any application for a construction permit on file at the time of enactment into law of this subsection, which permit would be for issuance under section 2133 of this title, and with respect to any application for an operating license in connection with which a written request for an antitrust review is made as provided for in paragraph (3), the Commission, after consultation with the Attorney General, may, upon determination that such action is necessary in the public interest to avoid unnecessary delay, establish by rule or order periods for Commission notification and receipt of advice differing from those set forth above and may issue a construction permit or operating license in advance of consideration of and findings with respect to the matters covered in this subsection: *Provided*, That any construction permit or operating license so issued shall contain such conditions as the Commission deems appropriate to assure that any subsequent findings and orders of the Commission with respect to such matters will be given full force and effect.

Aug. 1, 1946, c. 724, § 105, as added Aug. 30, 1954, c. 1073, § 1, 68 Stat. 938, and amended Aug. 26, 1964, Pub.L. 88–489, § 14, 78 Stat. 606; Dec. 19, 1970, Pub.L. 91–560, § 6, 84 Stat. 1473.

§ 2136. Classes of facilities

The Commission may—

(a) group the facilities licensed either under section 2133 or 2134 of this title into classes which may include either production or utilization facilities or both, upon the basis of the similarity of operating and technical characteristics of the facilities;

(b) define the various activities to be carried on at each such class of facility; and

(c) designate the amounts of special nuclear material available for use by each such facility.

Aug. 1, 1946, c. 724, § 106, as added Aug. 30, 1954, c. 1073, § 1, 68 Stat. 938.

§ 2137. Operators' licenses

The Commission shall—

(a) prescribe uniform conditions for licensing individuals as operators of any of the various classes of production and utilization facilities licensed in this chapter;

(b) determine the qualifications of such individuals;

(c) issue licenses to such individuals in such form as the Commission may prescribe; and

(d) suspend such licenses for violations of any provision of this chapter or any rule or regulation issued thereunder whenever the Commission deems such action desirable.

Aug. 1, 1946, c. 724, § 107, as added Aug. 30, 1954, c. 1073, § 1, 68 Stat. 939.

§ 2138. Suspension of licenses during war or national emergency

Whenever the Congress declares that a state of war or national emergency exists, the Commission is authorized to suspend any licenses granted under this chapter if in its judgment such action is necessary to the common defense and security. The Commission is authorized during such period, if the Commission finds it necessary to the common defense and security, to order the recapture of any special nuclear material or to order the operation of any facility licensed under section 2133 or 2134 of this title, and is authorized to order the entry into any plant or facility in order to recapture such material, or to operate such facility. Just compensation shall be paid for any damages caused by the recapture of any special nuclear material or by the operation of any such facility.

Aug. 1, 1946, c. 724, § 108, as added Aug. 30, 1954, c. 1073, § 1, 68 Stat. 939, and amended Sept. 23, 1959, Pub.L. 86-373, § 2, 73 Stat. 691.

§ 2139. General licenses; export licenses

With respect to those utilization and production facilities which are so determined by the Commission pursuant to section 2014(v)(2) or 2014(cc)(2) of this title the Commission may (a) issue general licenses for activities required to be licensed under section 2131 of this title, if the Commission determines in writing that such general licensing will not constitute an unreasonable risk to

the common defense and security, and (b) issue licenses for the export of such facilities, if the Commission determines in writing that each export will not constitute an unreasonable risk to the common defense and security.

Aug. 1, 1946, c. 724, § 109, as added Aug. 30, 1954, c. 1073, § 1, 68 Stat. 939, and amended Aug. 29, 1962, Pub.L. 87-615, § 9, 76 Stat. 411; Oct. 13, 1966, Pub.L. 89-645, § 1(b), 80 Stat. 891.

§ 2140. Exclusions from license requirement

Nothing in this subchapter shall be deemed—

(a) to require a license for (1) the processing, fabricating, or refining of special nuclear material, or the separation of special nuclear material, or the separation of special nuclear material from other substances, under contract with and for the account of the Commission; or (2) the construction or operation of facilities under contract with and for the account of the Commission; or

(b) to require a license for the manufacture, production, or acquisition by the Department of Defense of any utilization facility authorized pursuant to section 2121 of this title, or for the use of such facility by the Department of Defense or a contractor thereof.

Aug. 1, 1946, c. 724, § 110, as added Aug. 30, 1954, c. 1073, § 1, 68 Stat. 939.

* * * * *

§ 2201. General duties of Commission

In the performance of its functions the Commission is authorized to—

Establishment of advisory boards

(a) establish advisory boards to advise with and make recommendations to the Commission on legislation, policies, administration, research, and other matters, provided that the Commission issues regulations setting forth the scope, procedure, and limitations of the authority of each such board;

Standards governing use and possession of material

(b) establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nu-

clear materia source material, and byproduct material as the Commission may deem necessary to desirable to promote the common defense and security or to protect health or to minimize danger to life or property;

Studies and investigations

(c) make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper to assist it in exercising any authority provided in this chapter, or in the administration or enforcement of this chapter, or any regulations or orders issued thereunder. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. Witnesses subpenaed under this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States;

Employment of personnel

(d) appoint and fix the compensation of such officers and employees as may be necessary to carry out the functions of the Commission. Such officers and employees shall be appointed in accordance with the civil-service laws and their compensation fixed in accordance with chapter 51 and subchapter III of chapter 53 of Title 5, except that, to the extent the Commission deems such action necessary to the discharge of its responsibilities, personnel may be employed and their compensation fixed without regard to such laws: *Provided, however,* That no officer or employee (except such officers and employees whose compensation is fixed by law, and scientific and technical personnel up to a limit of the highest rate of grade 18 of the General Schedule) whose position would be subject to chapter 51 and subchapter III of chapter 53 of Title 5, if such provisions were applicable to such position, shall be paid a salary at a rate in excess of the rate payable under such provisions for positions of equivalent difficulty or responsibility. Such rates of compensation may be adopted by the Commission as may be authorized by chapter 51 and subchapter III of chapter 53 of Title 5, as of the same date such rates are authorized for positions subject to such provisions. The Commission shall make adequate provision for administrative review of any determination to dismiss any employee;

Acquisition of material, property, etc.; negotiation of commercial leases

(e) acquire such material, property, equipment, and facilities, establish or construct such buildings and facilities, and modify such buildings and facilities from time to time, as it may deem necessary, and construct, acquire, provide, or arrange for such facilities and services (at project sites where such facilities and services are not available) for the housing, health, safety, welfare, and recreation of personnel employed by the Commission as it may deem necessary, subject to the provisions of section 2224 of this title: *Provided, however,* That in the communities owned by the Commission, the Commission is authorized to grant privileges, leases and permits upon adjusted terms which (at the time of the initial grant of any privilege grant, lease, or permit, or renewal thereof, or in order to avoid inequities or undue hardship prior to the sale by the United States of property affected by such grant) are fair and reasonable to responsible persons to operate commercial businesses without advertising and without advertising[1] and without securing competitive bids, but taking into consideration, in addition to the price, and among other things (1) the quality and type of services required by the residents of the community, (2) the experience of each concession applicant in the community and its surrounding area, (3) the ability of the concession applicant to meet the needs of the community, and (4) the contribution the concession applicant has made or will make to the other activities and general welfare of the community;

Utilization of other Federal agencies

(f) with the consent of the agency concerned, utilize or employ the services or personnel of any Government agency or any State or local government, or voluntary or uncompensated personnel, to perform such functions on its behalf as may appear desirable;

Acquisition of real and personal property

(g) acquire, purchase, lease, and hold real and personal property, including patents, as agent of and on behalf of the United States, subject to the provisions of section 2224 of this title, and to sell, lease, grant, and dispose of such real and personal property as provided in this chapter;

Consideration of license applications

(h) consider in a single application one or more of the activities for which a license is required by this chapter, combine in a single license one or more of such activities, and permit the applicant or licensee to incorporate by reference pertinent information already filed with the Commission;

Regulations governing Restricted Data

(i) prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in connection with any activity authorized pursuant to this chapter, (2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 2073 of this title or produced by any person in connection with any activity authorized pursuant to this chapter, and to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, and (3) to govern any activity authorized pursuant to this chapter, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property;

Disposition of surplus materials

(j) without regard to the provisions of the Federal Property and Administrative Services Act of 1949, as amended, except section 488 of Title 40, or any other law, make such disposition as it may deem desirable of (1) radioactive materials, and (2) any other property, the special disposition of which is, in the opinion of the Commission, in the interest of the national security: *Provided, however,* That the property furnished to licensees in accordance with the provisions of subsection (m) of this section shall not be deemed to be property disposed of by the Commission pursuant to this subsection;

Carrying of firearms

(k) authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize such of those employees of its contractors engaged in the protection of property owned by the United States and located at facilities owned

by or contracted to the United States as it deems necessary in the interests of the common defense and security to carry firearms while in the discharge of their official duties;

(l) Repealed. Pub.L. 87–456, Title III, § 303(c), May 24, 1962, 76 Stat. 78.

Agreements regarding production

(m) enter into agreements with persons licensed under section 2133, 2134, 2073(a)(4), or 2093(a)(4) of this title for such periods of time as the Commission may deem necessary or desirable (1) to provide for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct, or other material or special nuclear material owned by or made available to such licensees and which is utilized or produced in the conduct of the licensed activity, and (2) to sell, lease, or otherwise make available to such licensees such quantities of source or byproduct material, and other material not defined as special nuclear material pursuant to this chapter, as may be necessary for the conduct of the licensed activity: *Provided, however,* That any such agreement may be canceled by the licensee at any time upon payment of such reasonable cancellation charges as may be agreed upon by the licensee and the Commission: *And provided further,* That the Commission shall establish prices to be paid by licensees for material or services to be furnished by the Commission pursuant to this subsection, which prices shall be established on such a nondiscriminatory basis as, in the opinion of the Commission, will provide reasonable compensation to the Government for such material or services and will not discourage the development of sources of supply independent of the Commission;

Delegation of functions

(n) delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this chapter except those specified in sections 2071, 2077(b), 2091, 2138, 2153, 2165(b) of this title (with respect to the determination of those persons to whom the Commission may reveal Restricted Data in the national interest), 2165(f) of this title and subsection (a) of this section;

Reports

(*o*) require by rule, regulation, or order, such reports, and the keeping of such records with respect to, and to provide for such inspections of, activities and studies of types specified in section 2051 of this title and of activities under licenses issued pursuant to sections 2073, 2093, 2111, 2133, and 2134 of this title, as may be necessary to effectuate the purposes of this chapter, including section 2135 of this title; and

Rules and regulations

(p) make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this chapter.

Easements for rights-of-way

(q) The Commission is authorized and empowered, under such terms and conditions as are deemed advisable by it, to grant easements for rights-of-way over, across, in, and upon acquired lands under its jurisdiction and control, and public lands permanently withdrawn or reserved for the use of the Commission, to any State, political subdivision thereof, or municipality, or to any individual, partnership, or corporation of any State, Territory, or possession of the United States, for (a) railroad tracks; (b) oil pipe lines; (c) substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipe lines; (d) canals; (e) ditches; (f) flumes; (g) tunnels; (h) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other fish-cultural improvements; (i) roads and streets; and (j) for any other purpose or purposes deemed advisable by the Commission: *Provided*, That such rights-of-way shall be granted only upon a finding by the Commission that the same will not be incompatible with the public interest: *Provided further*, That such rights-of-way shall not include any more land than is reasonably necessary for the purpose for which granted: *And provided further*, That all or any part of such rights-of-way may be annulled and forfeited by the Commission for failure to comply with the terms and conditions of any grant hereunder or for nonuse for a period of two consecutive years or abandonment of rights granted under authority hereof. Copies of all instruments granting easements over public lands pursuant to this section shall be furnished to the Secretary of the Interior.

Sale of utilities and related services

(r) Under such regulations and for such periods and at such prices the Commission may prescribe, the Commission may sell or contract to sell to purchasers within Commission-owned communities or in the immediate vicinity of the Commission community, as the case may be, any of the following utilities and related services, if it is determined that they are not available from another local source and that the sale is in the interest of the national defense or in the public interest:

(1) Electric power.

(2) Steam.

(3) Compressed air.

(4) Water.

(5) Sewage and garbage disposal.

(6) Natural, manufactured, or mixed gas.

(7) Ice.

(8) Mechanical refrigeration.

(9) Telephone service.

Proceeds of sales under this subsection shall be credited to the appropriation currently available for the supply of that utility or service. To meet local needs the Commission may make minor expansions and extensions of any distributing system or facility within or in the immediate vicinity of a Commission-owned community through which a utility or service is furnished under this subsection.

Succession of authority

(s) establish a plan for a succession of authority which will assure the continuity of direction of the Commission's operations in the event of a national disaster due to enemy activity. Notwithstanding any other provision of this chapter, the person or persons succeeding to command in the event of disaster in accordance with the plan established pursuant to this subsection shall be vested with all of the authority of the Commission: *Provided*, That any such succession to authority, and vesting of authority shall be effective only in the event and as long as a quorum of three or more members of the Commission is unable to convene and exercise direction during the disaster period: *Provided further*, That the disaster period includes the period when attack on the United States is imminent and the post-attack period necessary to reestablish normal lines of command;

Contracts

(t) enter into contracts for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct or other material, or special nuclear material, in accordance with and within the period of an agreement for cooperation while comparable services are available to persons licensed under section 2133 or 2134 of this title: *Provided*, That the prices for services under such contracts shall be no less than the prices currently charged by the Commission pursuant to subsection (m) of this section;

Additional contracts; guiding principles; appropriations

(u)(1) enter into contracts for such periods of time as the Commission may deem necessary or desirable, but not to exceed five years from the date of execution of the contract, for the purchase or acquisition of reactor services or services related to or required by the operation of reactors;

(2)(A) enter into contracts for such periods of time as the Commission may deem necessary or desirable for the purchase or acquisition of any supplies, equipment, materials, or services required by the Commission whenever the Commission determines that: (i) it is advantageous to the Government to make such purchase or acquisition from commercial sources; (ii) the furnishing of such supplies, equipment, materials, or services will require the construction or acquisition of special facilities by the vendors or suppliers thereof; (iii) the amortization chargeable to the Commission constitutes an appreciable portion of the cost of contract performance, excluding cost of materials; and (iv) the contract for such period is more advantageous to the Government than a similar contract not executed under the authority of this subsection. Such contracts shall be entered into for periods not to exceed five years each from the date of initial delivery of such supplies, equipment, materials, or services or ten years from the date of execution of the contracts excluding periods of renewal under option.

(B) In entering into such contracts the Commission shall be guided by the following principles: (i) the percentage of the total cost of special facilities devoted to contract performance and chargeable to the Commission should not exceed the ratio between the period of contract deliveries and the anticipated useful life of such special facilities; (ii) the desirability of obtaining options to renew the contract for reasonable periods at

prices not to include charges for special facilities already amortized; and (iii) the desirability of reserving in the Commission the right to take title to the special facilities under appropriate circumstances; and

(3) include in contracts made under this subsection provisions which limit the obligation of funds to estimated annual deliveries and services and the unamortized balance of such amounts due for special facilities as the parties shall agree is chargeable to the performance of the contract. Any appropriation available at the time of termination or thereafter made available to the Commission for operating expenses shall be available for payment of such costs which may arise from termination as the contract may provide. The term "special facilities" as used in this subsection means any land and any depreciable buildings, structures, utilities, machinery, equipment, and fixtures necessary for the production or furnishing of such supplies, equipment, materials, or services and not available to the vendors or suppliers for the performance of the contract.

Contracts for production or enrichment of special nuclear material; domestic licensees; other nations; prices; materials of foreign origin; criteria for availability of services under this subsection; Congressional review

(v)(A) enter into contracts with persons licensed under sections 2073, 2093, 2133 or 2134 of this title for such periods of time as the Commission may deem necessary or desirable to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission; and

(B) enter into contracts to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission in accordance with and within the period of an agreement for cooperation arranged pursuant to section 2153 of this title while comparable services are made available pursuant to paragraph (A) of this subsection: *Provided*, That (i) prices for services under paragraph (A) of this subsection shall be established on a nondiscriminatory basis; (ii) prices for services under paragraph (B) of this subsection shall be no less than prices under paragraph (A) of this subsection; and (iii) any prices established under this subsection shall be on a basis of recovery of the Government's costs over a reasonable period of time: *And provided further*, That

the Commission, to the extent necessary to assure the maintenance of a viable domestic uranium industry, shall not offer such services for source or special nuclear materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States. The Commission shall establish criteria in writing setting forth the terms and conditions under which services provided under this subsection shall be made available including the extent to which such services will be made available for source or special nuclear material of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States: *Provided*, That before the Commission establishes such criteria, the proposed criteria shall be submitted to the Joint Committee, and a period of forty-five days shall elapse while Congress is in session (in computing the forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days) unless the Joint Committee by resolution in writing waives the conditions of, or all or any portion of, such forty-five-day period.

License fees for nuclear power reactors

(w) prescribe and collect from any other Government agency, which applies for or is issued a license for a utilization facility designed to produce electrical or heat energy pursuant to section 2133 or 2134(b) of this title, any fee, charge, or price which it may require, in accordance with the provisions of section 483a of Title 31 or any other law, of applicants for, or holders of, such licenses.

Aug. 1, 1946, c. 724, § 161, as added Aug. 30, 1954, c. 1073, § 1, 68 Stat. 948, and amended July 14, 1956, c. 608, 70 Stat. 553; Aug. 6, 1956, c. 1015, § 4, 70 Stat. 1069; Aug. 21, 1957, Pub.L. 85-162, Title II, §§ 201, 204, 71 Stat. 410; Sept. 4, 1957, Pub.L. 85-287, § 4, 71 Stat. 613; July 7, 1958, Pub.L. 85-507, § 21(b)(1), 72 Stat. 337; Aug. 19, 1958, Pub.L. 85-681, §§ 6, 7, 72 Stat. 633; Sept. 21, 1959, Pub.L. 86-300, § 1, 73 Stat. 574; Sept. 6, 1961, Pub.L. 87-206, § 13, 75 Stat. 478; May 24, 1962, Pub.L. 87-456, Title III, § 303(c), 76 Stat. 78; Aug. 29, 1962, Pub.L. 87-615, § 12, 76 Stat. 411; Oct. 11, 1962, Pub.L. 87-793, § 1001(g), 76 Stat. 864; Aug. 26, 1964, Pub.L. 88-489, § 16, 78 Stat. 606; Dec. 14, 1967, Pub.L. 90-190, § 11, 81 Stat. 578; Oct. 15, 1970, Pub.L. 91-452, Title II, § 237, 84 Stat. 930; Dec. 19, 1970, Pub.L. 91-560, §§ 7, 8, 84 Stat. 1474; June 16, 1972, Pub.L. 92-314, Title III, § 301, 86 Stat. 227.

[1] So in original.

Indiana Dunes National Lakeshore Authorization Act

§ 460u. Purposes; authorization for establishment; description of area

In order to preserve for the educational, inspirational, and recreational use of the public certain portions of the Indiana dunes and other areas of scenic, scientific, and historic interest and recreational value in the State of Indiana, the Secretary of the Interior is authorized to establish and administer the Indiana Dunes National Lakeshore (hereinafter referred to as the "lakeshore") in accordance with the provisions of sections 460u to 460u-9 of this title. The lakeshore shall comprise the area within the boundaries delineated on a map identified as "A Proposed Indiana Dunes National Lakeshore", dated September 1966, and bearing the number "LNPNE-1008-ID", which map is on file and available for public inspection in the office of the Director of the National Park Service, Department of the Interior.

Pub.L. 89-761, § 1, Nov. 5, 1966, 80 Stat. 1309.

§ 460u-1. Acquisition of property—Authority of Secretary; manner and place; negotiation for Indiana Dunes State Park; exchange of property; fair market value; appraisal; cash equalization payments

(a) Within the boundaries of the lakeshore the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to acquire lands, waters, and other property, or any interest therein, by donation, purchase with donated or appropriated funds, exchange, or otherwise. The Indiana Dunes State Park may be acquired only by donation of the State of Indiana, and the Secretary is hereby directed to negotiate with the State for the acquisition of said park. In exercising his authority to acquire property by exchange for the purposes of sections 460u to 460u-9 of this title, the Secretary may accept title to non-Federal property located within the area described in section 460u of this title and convey to the grantor of such property any federally owned property under the jurisdiction of the Secretary which he classifies as suitable for exchange or other disposal within the State of Indiana or Illinois. Properties so exchanged shall be approximately equal in fair market value, as determined by the Secretary who may,

in his discretion, base his determination on an independent appraisal obtained by him: *Provided*, That the Secretary may accept cash from or pay cash to the grantor in such an exchange in order to equalize the values of the properties exchanged.

Liability of United States under contracts contingent on appropriations

(b) In exercising his authority to acquire property under subsection (a) of this section, the Secretary may enter into contracts requiring the expenditure, when appropriated, of funds authorized to be appropriated by section 460u–9 of this title, but the liability of the United States under any such contract shall be contingent on the appropriation of funds sufficient to fulfill the obligations thereby incurred.

Pub.L. 89–761, § 2, Nov. 5, 1966, 80 Stat. 1309.

§ 460u–2. Establishment of lakeshore; publication in Federal Register; continuing acquisition of lands

As soon as practicable after November 5, 1966, and following the acquisition by the Secretary of an acreage within the boundaries of the area described in section 460u of this title which in his opinion is efficiently administrable for the purposes of sections 460u to 460u–9 of this title, he shall establish the Indiana Dunes National Lakeshore by publication of notice thereof in the Federal Register. Following such establishment and subject to the limitations and conditions prescribed in section 460u of this title, the Secretary may continue to acquire lands and interests in lands for the lakeshore.

Pub.L. 89–761, § 3, Nov. 5, 1966, 80 Stat. 1309.

§ 460u–3. Suspension of condemnation power during existence of zoning ordinance; improved property defined

(a) The Secretary's authority to acquire property by condemnation shall be suspended with respect to all improved property located within the boundaries of the lakeshore during all times when an appropriate zoning agency shall have in force and applicable to such property a duly adopted, valid zoning ordinance approved by the Secretary in accordance with the provisions of section 460u–4 of this title.

(b) The term "improved property", whenever used in sections 460u to 460u–9 of this title, shall mean a detached, one-family dwelling, construction of which was begun before January 4, 1965, together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures accessory to the dwelling which are situated on the lands so designated. The amount of land so designated shall in every case be not more than three acres in area, and in making such designation the Secretary shall take into account the manner of noncommercial residential use in which the dwelling and land have customarily been enjoyed: *Provided*, That the Secretary may exclude from the land so designated any beach or waters, together with so much of the land adjoining such beach or waters, as he may deem necessary for public access thereto or public use thereof.

Pub.L. 89–761, § 4, Nov. 5, 1966, 80 Stat. 1309.

§ 460u–4. Zoning regulations—Standards for approval of ordinances; amendments; approval of ordinances; revocation of approval

(a) As soon as practicable after November 5, 1966, the Secretary shall issue regulations specifying standards for approval by him of zoning ordinances for the purposes of sections 460u–3 and 460u–5 of this title. The Secretary may issue amended regulations specifying standards for approval by him of zoning ordinances whenever he shall consider such amended regulations to be desirable due to changed or unforeseen conditions. The Secretary shall approve any zoning ordinance and any amendment to any approved zoning ordinance submitted to him which conforms to the standards contained in the regulations in effect at the time of adoption of such ordinance or amendment by the zoning agency. Such approval shall not be withdrawn or revoked, by issuance of any amended regulations after the date of such approval, for so long as such ordinance or amendment remains in effect as approved.

Commercial and industrial use prohibition; acreage, frontage, setback, and other requirements

(b) The standards specified in such regulations and amended regulations for approval of any zoning ordinance or zoning ordinance

amendment shall contribute to the effect of (1) prohibiting the commercial and industrial use, other than any commercial or industrial use which is permitted by the Secretary, of all property covered by the ordinance within the boundaries of the lakeshore; and (2) promoting the preservation and development, in accordance with the purposes of sections 460u to 460u–9 of this title, of the area covered by the ordinance within the lakeshore by means of acreage, frontage, and setback requirements and other provisions which may be required by such regulations to be included in a zoning ordinance consistent with the laws of the State of Indiana.

Adverse provisions and absence of notice for variance as requiring disapproval of ordinances

(c) No zoning ordinance or amendment thereof shall be approved by the Secretary which (1) contains any provision which he may consider adverse to the preservation and development, in accordance with the purposes of sections 460u to 460u–9 of this title, of the area comprising the lakeshore; or (2) fails to have the effect of providing that the Secretary shall receive notice of any variance granted under and any exception made to the application of such ordinance or amendment.

Termination of suspension of authority for acquisition by condemnation because of nonconforming variances and uses

(d) If any improved property, with respect to which the Secretary's authority to acquire by condemnation has been suspended according to the provisions of sections 460u to 460u–9 of this title, is made the subject of a variance under or exception to such zoning ordinance, or is subjected to any use, which variance, exception, or use fails to conform to or is inconsistent with any applicable standard contained in regulations issued pursuant to this section and in effect at the time of passage of such ordinance, the Secretary may, in his discretion, terminate the suspension of his authority to acquire such improved property by condemnation.

Certificate of suspension of authority for acquisition by condemnation

(e) The Secretary shall furnish to any party in interest requesting the same a certificate indicating, with respect to any property located within the lakeshore as to which the Secretary's authority to acquire such property by condemnation has been suspended in accordance with provisions of sections 460u to 460u–9 of this title, that such authority has been so suspended and the reasons therefor.

Pub.L. 89–761, § 5, Nov. 5, 1966, 80 Stat. 1310.

§ 460u–5. Owner's retention of right of use and occupancy for residential purposes for term of years—Conveyance or lease of right; adjustment of compensation

(a) Any owner or owners of improved property on the date of its acquisition by the Secretary may, as a condition to such acquisition, retain the right of use and occupancy of the improved property for noncommercial residential purposes for a term of twenty-five years, or for such lesser time as the said owner or owners may elect at the time of acquisition by the Secretary. Where any such owner retains a right of use and occupancy as herein provided, such right during its existence may be conveyed or leased for noncommercial residential purposes. The Secretary shall pay to the owner the fair market value of the property on the date of such acquisition, less the fair market value on such date of the right retained by the owner.

Termination of use and occupancy inconsistent with zoning ordinance and upon payment of sum for unexpired right

(b) The Secretary shall have authority to terminate any right of use and occupancy retained as provided in subsection (a) of this section at any time after the date upon which any use occurs with respect to such property which fails to conform or is any manner opposed to or inconsistent with the applicable standards contained in regulations issued pursuant to section 460u–4 of this title and which is in effect on said date: *Provided*, That no use which is in conformity with the provisions of a zoning ordinance approved in accordance with said section 460u–4 and applicable to such property shall be held to fail to conform or be opposed to or inconsistent with any such standard. In the event the Secretary terminates a right of use and occupancy under this subsection, he shall pay to the owner of the right so terminated an amount equal to the fair market value of the portion of said right which remained unexpired on the date of termination.

Pub.L. 89–761, § 6, Nov. 5, 1966, 80 Stat. 1311.

§ 460u–6. Administration—Utilization of authorities for conservation and management of natural resources

(a) In the administration of the lakeshore the Secretary may utilize such statutory authorities relating to areas of the national park system and such statutory authority otherwise available to him for the conservation and management of natural resources as he deems appropriate to carry out the purposes of sections 460u to 460u–9 of this title.

Preservation of lakeshore; incompatible visitor conveniences restricted; provisions for public enjoyment and understanding; developments for public uses

(b) In order that the lakeshore shall be permanently preserved in its present state, no development or plan for the convenience of visitors shall be undertaken therein which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions now prevailing or with the preservation of such historic sites and structures as the Secretary may designate: *Provided*, That the Secretary may provide for the public enjoyment and understanding of the unique natural, historic, and scientific features within the lakeshore by establishing such trails, observation points, and exhibits and providing such services as he may deem desirable for such public enjoyment and understanding: *Provided further*, That the Secretary may develop for appropriate public uses such portions of the lakeshore as he deems especially adaptable for such uses.

Pub.L. 89-761, § 7, Nov. 5, 1966, 80 Stat. 1311.

§ 460u-7. Indiana Dunes National Lakeshore Advisory Commission—Establishment; termination

(a) There is hereby established an Indiana Dunes National Lakeshore Advisory Commission. Said Commission shall terminate ten years after the date of establishment of the national lakeshore pursuant to sections 460u to 460u-9 of this title.

Membership; appointment; term of office; recommendation or designation of appointees

(b) The Commission shall be composed of seven members, each appointed for a term of two years by the Secretary, as follows: (1) one member who is a year-round resident of Porter County to be appointed from recommendations made by the commissioners of such county; (2) one member who is a year-round resident of the town of Beverly Shores to be appointed from the recommendations made by the board of trustees of such town; (3) one member who is a year-round resident of the towns of Porter, Dune Acres, Portage, Pines, Chesterton, Ogden Dunes, or the village of Tremont, such member to be appointed from recommendations made by the boards of trustees or the trustee of the affected town or township; (4) one member who is a year-round resident of the city of Michigan City to be appointed from recommendations made by such city; (5) two members to be appointed from recommendations made by the Governor of the State of Indiana; and (6) one member to be designated by the Secretary.

Chairman; vacancies

(c) The Secretary shall designate one member to be Chairman. Any vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

Compensation and expenses; vouchers

(d) A member of the Commission shall serve without compensation as such. The Secretary is authorized to pay the expense reasonably incurred by the Commission in carrying out its responsibilities under sections 460u to 460u-9 of this title on vouchers signed by the Chairman.

Consultation of Secretary with Commission

(e) The Secretary or his designee shall, from time to time, consult with the Commission with respect to matters relating to the development of the Indiana Dunes National Lakeshore and with respect to the provisions of sections 460u-3, 460u-4, and 460u-5 of this title.

Pub.L. 89-761, § 8, Nov. 5, 1966, 80 Stat. 1311.

§ 460u-8. State jurisdiction

Nothing in sections 460u to 460u-9 of this title shall deprive the State of Indiana or any political subdivision thereof of its civil and criminal jurisdiction over persons found, acts performed, and offenses committed within the boundaries of the Indiana Dunes National Lakeshore or of its right to tax persons, corporations, franchises, or other non-Federal property on lands included therein.

Pub.L. 89-761, § 9, Nov. 5, 1966, 80 Stat. 1312.

§ 460u-9. Authorization of appropriations

There are hereby authorized to be appropriated not more than $27,900,000 for the acquisition of land and interests in land pursuant to sections 460u to 460u-9 of this title.

Pub.L. 89-761, § 10, Nov. 5, 1966, 80 Stat. 1312.

National Environmental Policy Act of 1969

§ 4321. Congressional declaration of purpose

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

Pub.L. 91-190, § 2, Jan. 1, 1970, 83 Stat. 852.

§ 4331. Congressional declaration of national environmental policy

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Pub.L. 91-190, Title I, § 101, Jan. 1, 1970, 83 Stat. 852.

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes;

(D) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(E) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(F) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(G) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(H) assist the Council on Environmental Quality established by subchapter II of this chapter.

Pub.L. 91-190, Title I, § 102, Jan. 1, 1970, 83 Stat. 853.

§ 4333. Conformity of administrative procedures to national environmental policy

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this chapter and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this chapter.

Pub.L. 91-190, Title I, § 103, Jan. 1, 1970, 83 Stat. 854.

§ 4334. Other statutory obligations of agencies

Nothing in section 4332 or 4333 of this title shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Pub.L. 91-190, Title I, § 104, Jan. 1, 1970, 83 Stat. 854.

§ 4335. Efforts supplemental to existing authorizations

The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of Federal agencies.

Pub.L. 91-190, Title I, § 105, Jan. 1, 1970, 83 Stat. 854.

Organic Act Of The National Park Service, As Amended

§ 1. Service created; director; other employees

There is created in the Department of the Interior a service to be called the National Park Service, which shall be under the charge of a director. The Secretary of the Interior shall appoint the director, and there shall also be in said service such subordinate officers, clerks, and employees as may be appropriated for by Congress. The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter

specified, except such as are under the jurisdiction of the Secretary of the Army, as provided by law, by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

Aug. 25, 1916, c. 408, § 1, 39 Stat. 535; Mar. 4, 1923, c. 265, 42 Stat. 1488; Mar. 3, 1925, c. 462, 43 Stat. 1176; Ex.Ord. No. 6166, § 2, June 10, 1933; Mar. 2, 1934, c. 38, § 1, 48 Stat. 389.

Public Law 91-383, August 18, 1970 (National Park Service)

§ 1a-1. National park system: administration; declaration of findings and purpose

Congress declares that the national park system, which began with establishment of Yellowstone National Park in 1872, has since grown to include superlative natural, historic, and recreation areas in every major region of the United States, its territories and island possessions; that these areas, though distinct in character, are united through their inter-related purposes and resources into one national park system as cumulative expressions of a single national heritage; that, individually and collectively, these areas derive increased national dignity and recognition of their superb environmental quality through their inclusion jointly with each other in one national park system preserved and managed for the benefit and inspiration of all the people of the United States; and that it is the purpose of this Act to include all such areas in the System and to clarify the authorities applicable to the system.

Pub.L. 91-383, § 1, Aug. 18, 1970, 84 Stat. 825.

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§ 1c. Same; general provisions—Definition

(a) The "national park system" shall include any area of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes.

Specific provisions applicable to area; uniform application of sections 1b to 1d and other provisions of this title to all areas when not in conflict with specific provisions; references in other provisions to national parks, monuments, recreation areas, historic monuments, or parkways not limitation of such other provisions to those areas

(b) Each area within the national park system shall be administered in accordance with the provisions of any statute made specifically applicable to that area. In addition, the provisions of sections 1b to 1d of this title, and the various authorities relating to the administration and protection of areas under the administration of the Secretary of the Interior through the National Park Service, including but not limited to the Act of August 25, 1916 (39 Stat. 535), as amended (sections 1 and 2 to 4 of this title), the Act of March 4, 1911 (36 Stat. 1253), as amended (section 5 of this title) relating to rights-of-way, the Act of June 5, 1920 (41 Stat. 917), as amended (section 6 of this title), relating to donation of land and money, sections 1, 4, 5, and 6 of the Act of April 9, 1924 (43 Stat. 90), as amended (sections 8 and 8a to 8c of this title), relating to roads and trails, the Act of March 4, 1931 (46 Stat. 1570; section 8d of this title) relating to approach roads to national monuments, the Act of June 3, 1948 (62 Stat. 334), as amended (sections 8e to 8f of this title), relating to conveyance of roads to States, the Act of August 31, 1954 (68 Stat. 1037), as amended (section 452a of this title), relating to acquisitions of inholdings, section 1 of the Act of July 3, 1926 (44 Stat. 900), as amended (section 12 of this title), relating to aid to visitors in emergencies, the Act of March 3, 1905 (33 Stat. 873; section 10 of this title), relating to arrests, sections 3, 4, 5, and 6 of the Act of May 26, 1930 (46 Stat. 381), as amended (sections 17b, 17c, 17d, and 17e of this title), relating to services or other accommodations for the public, emergency supplies and services to concessioners, acceptability of travelers checks, care and removal of indigents, the Act of October 9, 1965 (79 Stat. 696; (sections 20 to 20g of this title), relating to concessions, the Land and Water Conservation Fund Act of 1965, as amended, and the Act of July 15, 1968 (82 Stat. 355), shall, to the extent such provisions are not in conflict with any such specific provision, be applicable to all areas within the national park system and any reference in such Act to national parks, monuments, recreation areas, historic monuments, or parkways shall hereinafter not be construed as limiting such Acts to those areas.

Aug. 8, 1953, c. 384, § 2, 67 Stat. 496; Aug. 18, 1970, Pub.L. 91-383, § 2(b), 84 Stat. 826.

§ 2. National parks, reservations, and monuments; supervision

The director shall, under the direction of the Secretary of the Interior, have the supervision, management, and control of the several national parks and national monuments which on August 25, 1916, were under the jurisdiction of the Department of the Interior, and of the Hot Springs National Park in the State of Arkansas, and of such other national parks and reservations of like character as may be created by Congress. In the supervision, management, and control of national monuments contiguous to national forests the Secretary of Agriculture may cooperate with said National Park Service to such extent as may be requested by the Secretary of the Interior.

Aug. 25, 1916, c. 408, § 2, 39 Stat. 535; Mar. 4, 1921, c. 161, § 1, 41 Stat. 1407.